IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5786 OF 2006

Shri Prabhakar Dagdu Mhatre .. Petitioner.

V/s.

The State of Maharashtra & Ors. .. Respondents.

Mr.A.M.Joshi for the Petitioner.

Mrs. M.P.Thakur, AGP for the Respondent Nos.1 to 3.

Mr.K.K.Malphatak for the Respondent No.4.

CORAM : F.I. REBELLO AND
R.M. SAVANT, JJ.

DATED : 16TH MARCH, 2007.

P.C.:

. The petitioner is working as a Laboratory Attendant. A vacancy arose for the post of Shikshan Sevak, to which post the Respondent No.6 has been appointed.

2. The contention of the petitioner is, relying upon the Government Resolution dated 18.09.1995, that in his place, the Respondent No.6 should not have been appointed to the post of Shikshan Sevak. We have considered the said G.R.. The said G.R. only sets out

that a Laboratory Assistant and or a Clerk in the event of the vacancy arises, shall be given preference for the appointment to the said post. The concept of preference as now been understood is to mean where there are two candidates, equally meritorious, then preference comes into play.

3. In the instant case, the petitioner had appeared for the interview but the respondent No.6 has been found to be more meritorious and appointed to the said post. Therefore, the contention urged by the petitioner has to be rejected. It is also sought to be submitted, that as the petitioner is equally qualified he ought to have been considered for the appointment to the post of Shikshan Sevak. In such matters, the courts have understood the law to be that in respect of those inhouse candidates, who in the course of employment acquired additional qualification, they have to be considered.

4. Considering that the petitioner appeared for the interview and was not selected, in our opinion, this is not a fit case to exercise our extraordinary jurisdiction. We make it clear that though we reject the claim of the petitioner to the present post, it will be always open to the petitioner in terms of the

existing rules to have his claim considered in future, for the post of Shikshan Sevak.

5. In the light of the above, the petition is disposed of.

(F.I.REBELLO,J.)

(R.M.SAVANT,J.)

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